

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

January 14, 2002

D039056 In re Lopez on Habeas Corpus

The petition and application for constructive notice of appeal are denied.

D039331 Guadiana v. Superior Court of San Diego County/People

The petition is denied.

D036823 Kraffert v. Shea Homes et al.

The order denying the defendants' motion for determination of prevailing party and award of attorney fees is affirmed. Kraffert is to recover her costs of appeal. McIntyre, J., We Concur: Huffman, Acting P.J. Nares, J.

D037959 DeFrank v. Superior Court of San Diego County/Invitrogen Corporation

At the request of petitioner, the petition for writ of mandate is dismissed.

D037462 People v. Isaac

The judgment is affirmed. McIntyre, J.; We Concur: Haller, Acting P.J., McDonald, J.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Terry O'Rourke
Clerk: D. E. Moore

**D036202 Snapp & Associates Insurance Services, Inc. v. Malcom Bruce Burlingame
Robertson, et al.**

Cause called on merits. Gastone Bebi, Esq. argued for appellant. Eulalio J. Garcia, Esq. argued for respondent. Mr. Bebi replied. John A. Mitchell, Esq. was present in oral argument for appellant, but did not argue. Cause submitted.

D036368 Mittelman v. Testman

Cause called on merits. John D. Klinedinst, Esq. argued for appellant. J. Mark Dunbar, Esq. argued for respondent. Mr. Klinedinst replied. Cause submitted.

Court recessed at 10 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

D036986 Massachusetts Mutual Life Insurance Company v. Superior Court

Matter called on merits. Vaughn Charles Williams, Esq. argued for petitioner. Mike Fish, Esq. was present in oral argument for petitioner, but did not argue. Bill Dato, Esq. argued for real party in interest, Karges, Jr. Mr. Williams replied. Matter submitted.

Court recessed at 10:25 a.m. until 1:30 p.m.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

January 14, 2002 (Continued)

Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Richard Huffman
Clerk: D. E. Moore

D036697 People etc. v. Barragan

Cause called on merits. John L. Staley, Esq. argued for appellant, Barragan. Garrett Beaumont, Deputy Attorney General argued for respondent. Cause submitted.

D036904 People etc. v. Garcia

Cause called on merits. Joanna McKin, Esq. argued for appellant. Lise Jacobson, Deputy Attorney General argued for respondent. Cause submitted.

D038113 People etc. v. Borja

Cause called on merits. Josephine Kiernan, Deputy District Attorney General argued for appellant. Christopher Blake, Esq. argued for respondent. Ms. Kiernan replied. Cause submitted.

Court recessed at 2:13 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Terry O'Rourke

D037023 Rivera v. San Diego Police Department et al.

Cause called on merits. No appearance by appellant's counsel. Mark Stiffler, Deputy City Attorney argued for respondent. Cause submitted.

Court recessed at 2:30 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Judith Haller

D030982 People v. Soltero and Valadez

D036313 In re Valadez on Habeas Corpus

Cause called on merits. Beatrice C. Tillman, Esq. argued for appellant and petitioner, Marco Valadez. Steve Oetting, Deputy Attorney General argued for respondent. Steve Carr, Deputy District Attorney argued for Habeas Corpus. Ms. Tillman replied. Case will not be submitted at this time, subject to further order of the court.

Court recessed at 3:10 p.m. until Tuesday, January 15, 2002 at 9 a.m.

D039109 Austad v. Superior Court of San Diego County/Alvarado Convalescent and Rehabilitation Hospital et al.

The petition is denied.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

January 14, 2002 (Continued)

D038016 People v. Almendra

The judgment (order denying motion to suppress) is affirmed. Huffman, J.; We Concur: Kremer, P.J., McConnell, J .

D039110 Austad v. Superior Court of San Diego County/Preferred Care West II, Inc., et al.

The petition is denied.

D038060 In re Singleton on Habeas Corpus

The petition for writ of habeas corpus is denied.

D035942 People v. Leep

D037747 In re Leep on Habeas Corpus

The above-entitled cases are consolidated. The judgment is affirmed. The petition for writ of habeas corpus is denied. O'Rourke, J.; We Concur: Huffman, Acting P.J., McDonald, J.

D038451 Miranda v. Ocean Garden Products, Inc.

The appeal is dismissed pursuant to rule 17(a).

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

January 15, 2002

D038581 Reichel v. North County Jewish Community Center et al.

The appeal is dismissed pursuant to rule 17(a).

D037310 People v. Estrada

The judgment is affirmed. Huffman, J.; We Concur: Kremer, P.J., O'Rourke, J.

D037686 People v. Parrison

Judgment affirmed. McDonald, J.; We Concur: Kremer, P.J., Huffman, J.

D038397 In re Anthony R., a Juvenile

The order is affirmed. McIntyre, J.; We Concur: Kremer, P.J., Nares, J.

D038630 Seagraves et al. v. City of Laguna Beach et al.

The judgment is affirmed. Respondents are entitled to costs on appeal. McDonald, J.;
We Concur: Kremer, P.J., McConnell, J.

D037231 Redevelopment Agency of the City of Chula Vista v. Rados Bros.

The opinion filed on December 17, 2001, and modified on January 7, 2002, is modified. There is no change in judgment.

D035933 People v. Mason et al.,

The court is instructed to modify the judgment (1) to reflect a sentence of five years against Wilson on the count 4 second degree robbery conviction; (2) to reflect sentences of six months against Wilson on the counts 5 through 9 second degree attempted robbery convictions; and (3) to reflect that the three-year gang enhancement on the count 1 murder conviction against Wilson is stricken. This matter is remanded for the court to set terms and stay them on counts 2, 3 and 5 through 9 as to Mason. The clerk of the superior court is ordered to correct the abstract of judgment and to forward a corrected copy to the Department of Corrections. In all other respects the judgment is affirmed. CERTIFIED FOR PARTIAL PUBLICATION. Nares, Acting P.J., We Concur: Haller, J., McIntyre, J.

D038185 State Farm Fire and Casualty Company v. Jarrell

The judgment is affirmed. State Farm is awarded costs on appeal. McConnell, J.;
We Concur: Kremer, P.J., McDonald, J.

Court convened at 9 a.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices
Richard Huffman and Terry O'Rourke
Clerk: D. E. Moore

D036728 People etc. v. Martinez

Cause called on merits. Susan K. Keiser, Esq. argued for appellant. Charles Ragland, Deputy Attorney General argued for respondent. Ms. Keiser replied. Cause submitted.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

January 15, 2002 (Continued)

D035358 Grijalva v. Rancho Vista Del Mar et al.

Cause called on merits. Michael H. Fish, Esq. argued for appellant. John Morris, Esq. argued for respondent. Mr. Fish replied. Cause submitted.

Court recessed at 9:31 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

D038186 Patton et al. v. Mendoza et al.

Cause called on merits. R. Duane Westrup, Esq. argued for appellant. Jules Solomon Zeman, Esq. argued for respondent. Mr. Westrup replied. Cause submitted.

Court recessed at 9:53 a.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Richard Huffman and James McIntyre

D035925 Syntron Bioresearch, Inc. v. Genix Biotek, Inc., et al.

Cause called on merits. William Kimball Pratt, Esq. argued for appellant. Steven E. Comer, Esq. argued for respondent. Mr. Pratt replied. Cause submitted.

Court recessed at 10:20 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Patricia Benke and Terry O'Rourke

Clerk: D. E. Moore

D038190 People etc. v. The Clauser/Wells Partnership

Cause called on merits. Robert W. Vidor, Esq. argued for appellant. Arnold Kent Graham, Esq. argued for respondent. Mr. Vidor replied. Cause submitted.

D037344 Sullivan v. Tucker et al.

Cause called on merits. Constance Klein, argued for appellant in pro per, Tucker and Klein. Joseph L. Gimbrone, Esq. argued for respondent. Ms. Klein replied. Cause submitted.

Court recessed at 2:25 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

D038757 Jabro et al. v. Superior Court/Hill

Matter called on merits. Jan K. Buddingh, Jr., Esq. argued for appellant. Craig P. Fagan, Esq. argued for respondent. Mr. Buddingh replied. Cause submitted.

Court recessed at 2:50 p.m. until Wednesday, January 16, 2002 at 9 a.m.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

January 15, 2002 (Continued)

D037465 In re Woodham on Habeas Corpus

The opinion filed December 24, 2001, is ordered certified for publication.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

January 16, 2002

Court convened at 9:00 a.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre
Clerk: D. E. Moore

D035274 Akers v. County of San Diego

Cause called on merits. William H. Songer, Deputy County Counsel argued for appellant/cross-respondent. William Johnson, Esq. was present in oral argument with Mr. Songer, but did not argue. Michael H. Fish, Esq. argued for respondent/x-appellant. Robert F. Vaage, Esq. was present in oral argument with Mr. Fish, but did not argue. Mr. Songer replied. Cause submitted.

Court recessed at 9:42 a.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Alex McDonald

D036550 People etc. v. Fulton

Cause called on merits. John Evan Edwards, Esq. argued for appellant. Gary Brozio, Deputy Attorney General argued for respondent. Mr. Edwards replied. Cause submitted.

Court recessed at 10:20 a.m. to change panel members. New panel members: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Alex McDonald

D037690 In re KERCH on Habeas Corpus

Matter called on merits. Rebecca Jones, Esq. argued for petitioner. Steven E. Feldman, Esq. was present in oral argument for petitioner, but did not argue. Mark Beesley, Deputy City Attorney argued for respondent. Ms. Jones replied. Matter submitted.

Court recessed at 10:45 a.m. until 1:30 p.m.

D038220 People v. Henry

Judgment affirmed. McDonald, J.; We Concur: Kremer, P.J., Nares, J.

D038964 In re Pulalowski on Habeas Corpus

The petition is denied.

D037772 Palmer v. Superior Court of San Diego County/Pacificare of California

The petition for rehearing is denied.

D037231 Redevelopment Agency of the City of Chula Vista v. Rados Bros.

The opinion filed on December 17, 2001, and modified on January 7, 2002 and January 15, 2002, is ordered certified for publication.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

January 16, 2002 (Continued)

Court reconvened at 1:30 p.m.

Present: The Honorable Daniel Kremer, Presiding Justice, and The Honorable Associate Justices
Gilbert Nares and Terry O'Rourke
Clerk: D. E. Moore

D037933 Forrest v. Forrest

Cause called on merits. Stephen Temko, Esq. argued for appellant. Sharron Voorhees, Esq. argued for respondent. Mr. Temko replied. Cause submitted.

Court recessed at 1:53 p.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Judith McConnell

D038611 Gemini Aluminium Corporation v. California Custom Shapes, Inc.

Cause called on merits. Lewrence Heller, Esq. argued for appellant. H. Jay Ford, Esq. argued for respondent. Mr. Heller replied. Cause submitted.

Court recessed at 2:25 to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Judith McConnell

D036636 People etc. v. Passmore

Cause called on merits. Gideon Margolis, Esq. argued for appellant. Frederick R. Millar, Jr., Deputy Attorney General argued for respondent. Mr. Margolis replied. Cause submitted.

D035745 People etc. v. Sambrano et al.

Cause called on merits. Joel Liberson, Esq. argued for appellant, Sambrano. Patrick J. Hennessey, Esq. argued for appellant, Hernandez, Jr. Susan Miller, Deputy Attorney General argued for respondent. Cause submitted.

Court recessed at 2:50 p.m. to change panel members. New panel members: The Honorable Alex McDonald, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Judith McConnell

D037208 Uber v. Hoffman

Cause called on merits. P. A. Quint, Esq. argued for appellant. Dennis D. Burns, Esq. argued for respondent. Mr. Quint replied. Cause submitted.

D038638 In re Daniel P., a Juvenile

Cause called on merits. Steven L. Victor, Esq. argued for appellant. Jane A. Gorman, Esq. argued for respondent. Alice C. Shotton, Esq. argued for the minor. Mr. Victor replied. Cause submitted.

Court adjourned at 3:49 p.m.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

January 16, 2002 (Continued)

D035507 Lynch v. Warwick

The judgment and order are affirmed. CERTIFIED FOR PUBLICATION. Kremer, P.J.;
I Concur: Benke, J., McDonald (Dissenting)

D036108 People v. Smith

The judgment is reversed and the matter is remanded with directions for further proceedings consistent with this opinion. CERTIFIED FOR PUBLICATION. McDonald, J.; I Concur: Nares, J., I respectfully Dissent: Benke, Acting P.J.

D039328 Wildish et al. v. Superior Court of San Diego County/Wells et al.

The petition is denied.

D036014 People v. Aquino

The judgment is affirmed. Benke, Acting P.J.; We Concur: Huffman, J., McDonald, J.

D039363 Hubbard v. Superior Court of San Diego County/Burns et al.

The petition is denied.

D035933 People v. Mason et al.

It is order that the opinion filed January 15, 2002, is modified. There is no change in judgment. CERTIFIED FOR PARTIAL PUBLICATION.

D038643 In re Jacob B., a Juvenile.

Orders affirmed. Haller, J.; We Concur: Kremer, P.J., McConnell, J.

D030583 People v. Bowden

The judgment is reversed. McIntyre, J.; We Concur: Huffman, Acting P.J., McDonald, J.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

January 17, 2002

D035925 Syntron Bioresearch, Inc. v. Genix Biotek, Inc., et al./Pratt

The order is reversed in part as to the award of \$30,959.00 attributable to responding to the petition for a writ of coram vobis. As modified by striking that amount and recalculating the remainder, the award of \$22,244.25 is affirmed. The parties shall bear their own costs. Huffman, J.; We Concur: Kremer, P.J., McIntyre, J.

D036904 People v. Garcia

The judgment is affirmed. Huffman, J.; We Concur: Kremer, P.J., Benke, J.

D036631 Rodriguez et al. v. Care With Dignity Health Care Inc.

The judgment as to appellants' contract cause of action is reversed and the trial court is directed to enter judgment in accordance with the verdict. The judgment is affirmed in all other respects. McIntyre, J.; We Concur: Nares, J., Haller, J.

D031727 People v. Simonton

The judgment is affirmed. McIntyre, J.; We Concur: Kremer, P.J., Nares, J.

D039255 Maria O. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Maria O. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

D039106 In re Miller on Habeas Corpus

The petition is denied.

**D038350 Dune Company of Imperial Valley v. Superior Court of Imperial County/
Drewry et al.**

The petition is denied.

D035513 People v. McCallister

The judgment of conviction is reversed and the matter is remanded for further proceedings. McIntyre, J.; We Concur: Huffman, Acting P.J., Haller, J.

D039377 In re Samantha S., a Juvenile

The notice of appeal filed January 11, 2002 by father, David S., is hereby dismissed as untimely.

D039036 Josephine S. v. The Superior Court of San Diego County/San Diego County Health and Human Services Agency

The petition is denied. McIntyre, J.; We Concur: Kremer, P.J., O'Rourke, J.

D039080 In re Barnes on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

January 17, 2002 (Continued)

D039387 Lee v. Superior Court of San Diego County/McPherson et al.
The petition is denied.

COURT OF APPEAL OF STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

January 18, 2002

D037907 Hollis-Eden Pharmaceuticals, Inc. v. Dickie 13_62301 et al.

The appeal is dismissed. Each party to bear its own costs.

D036109 People v. Barcheers

It is ordered that the opinion filed herein on January 2, 2002 be modified. The request for publication is denied. The petition for rehearing is denied. There is no change in judgment.

D038071 People v. Barbosa

Judgment affirmed. Benke, Acting P.J.; We Concur: Kremer, P.J., McDonald, J.

**D039104 Hargraves v. Workers' Compensation Appeals Board/San Diego Unified Port
District/Zenith Insurance Company**

The petition is denied.